

The following is a draft subsection for consideration of incorporating into a revised WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

(x) **Drop shipments.** A drop shipment transaction (sometimes referred to as a "third-party sale") generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a supplier or distributor and instructs that supplier or distributor to deliver the property directly to the seller's customer. If the property is delivered in Washington, the customer is subject to retail sales or use tax unless specifically exempt by law or the customer properly documents that the sale is a wholesale sale. (See WAC 458-20-102 and 458-20-102A).

The following examples in this subsection illustrate the taxability of drop shipments. The examples presume the seller and supplier/distributor

- Have retained the proper proof documents, thus the sale from the supplier/distributor to the seller is a wholesale sale, and
- Did not manufacture in Washington the property being sold.

(a) Where Seller and Distributor are located out of state and do not have nexus with Washington, and Customer is located in Washington; the sales of tangible personal property by Seller to Customer and Distributor to Seller are not subject to B&O tax. In addition, neither Seller nor Distributor is required to collect retail sales tax on the sale. Customer, however, is liable for use tax and must remit the tax directly to the department unless specifically exempt by law or the property is purchased for resale.

Summary:

(i) Seller has no Washington nexus -

- Seller does not owe B&O tax, and
- Seller has no responsibility to collect retail sales tax.

(ii) Distributor has no Washington nexus -

- Distributor does not owe B&O tax.

(iii) Customer is responsible for paying any use tax directly to the department.

If the seller has nexus with Washington but the supplier does not have nexus with Washington, the transactions are subject to tax as provided below in subsection (b). If the supplier has nexus with Washington but the seller does not have nexus with Washington, the transactions are subject to tax as provided below in subsection (c).

(b) Where Seller and Customer are located in Washington, and Distributor is located out of state and does not have nexus

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with Washington; the sale of tangible personal property by Distributor to Seller is not subject to B&O tax. The sale by Seller to Customer is subject to B&O tax, and if the sale is not specifically exempt or a sale for resale by Customer, Washington's retail sales tax also applies.

Summary:

(i) Seller has Washington nexus -

- Seller owes B&O tax, and
- Seller must collect retail sales tax unless the sale is exempt or for resale.

(ii) Distributor has no Washington nexus -

- Distributor does not owe B&O tax.

(iii) If Seller fails to properly charge retail sales tax, Customer is responsible for paying the tax directly to the department.

Had Seller been located outside Washington, but had nexus, Seller's tax-reporting responsibilities would be the same.

(c) Where Seller is located out of state and does not have nexus with Washington, and Customer and Distributor are located in Washington; the sale of tangible personal property by Distributor to Seller is a wholesale sale and subject to B&O tax. The sale from Seller to Customer is not subject to B&O tax, and Seller is not required to collect retail sales tax on the sale. Customer is liable for use tax and must remit the tax directly to the department unless specifically exempt by law or the property is purchased for resale.

Summary:

(i) Seller has no Washington nexus -

- Seller does not owe B&O tax, and
- Seller has no responsibility for collecting retail sales tax.

(ii) Distributor has Washington nexus -

- Distributor owed B&O tax.

(iii) Customer is responsible for paying any use tax directly to the department.

Had Distributor been located outside Washington, but had nexus, Distributor's tax-reporting responsibilities would be the same.

If the seller in this example were to have had nexus with Washington, the transactions would have been subject to tax as provided below in the next example.

(d) Where Seller, Distributor, and Customer are all located in Washington, Distributor's sale to Seller is a wholesale sale and subject to B&O tax. The sale from Seller to Customer is

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